IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of		Docket No. P26845
	Christopher J. TATAR	Confirmation No. 1368
Serial No.:	10/076,347	Group Art Unit: No. 3651
Filed:	February 19, 2002	Examiner: R. K. Sharma
For:	**BI-DIRECTIONAL PACKAGE DIVERT MECHANISM AND METHOD OF USE**	

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This request is being filed concurrently with a Notice of Appeal and is responsive to the Final Official Action of July 27, 2006.

Reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejection and the 35 U.S.C. § 103(a) rejections are respectfully requested in view of the following remarks.

A prima facie case of anticipation has not been set forth and the Rejection Under 35 U.S.C. § 102(b) Is Improper. A prima facie case of unpatentability has not been set forth and the Rejections Under 35 U.S.C. § 103(a) Are Improper

Examiner's Assertion

The Examiner asserts that independent claim 1 is anticipated by SYKES.

Applicant's Response

Applicant respectfully disagrees. Claim 1 recites, inter alia:

> wherein the movable diverting mechanism is capable of remaining in a static position allowing the item to pass through the package divert mechanism while moving along the original direction.

SYKES discloses a conveyor diverter which has a frame with an entrance and exits, and which utilizes a movable diverting blade 110 (see Fig. 18 and col. 17, lines 15-32). However, it is clear from col. 18, lines 8-15 of SYKES that the disclosed diverter system

utilizes a selector switch 136 to control whether the diverter diverts the packages to either the left or the right sides. Furthermore, the Examiner has not explained how SYKES can be read to disclose that the movable diverting mechanism is capable of remaining in a static position allowing the item to pass through the package divert mechanism while moving along the original direction.

Examiner's Assertion

The Examiner asserts that independent claim 8 is anticipated by SYKES.

Applicant's Response

Applicant respectfully disagrees. Claim 8 recites, inter alia:

an over current sensor for determining whether a current associated with an actuator exceeds a threshold limit.

The Examiner is not correct that ref. Nos. 28R and 28L of SYKES are over current sensors. SYKES clearly states at col. 5, lines 8-11 and col. 6, lines 34-37 that the sensors 28L and 28R are limit switches which open and close a circuit and not overcurrent sensors that determine whether a current associated with an actuator exceeds a threshold limit. A limit switch is not an overcurrent sensor.

Examiner's Assertion

The Examiner asserts that independent claim 14 is anticipated by SYKES.

Applicant's Response

Applicant respectfully disagrees. Claim 14 recites, inter alia:

a means for positioning the movable blade member in a static position allowing the item to pass through the bidirectional divert mechanism.

The Examiner identifies ref. No. 110 as the movable blade mechanism and ref. No. 136 as the home sensor, and alleges that SYKES discloses this feature at col. 1, lines 20-36, col. 2, lines 28-36, col. 12, lines 21-35, col. 13, lines 3-5, and Figs. 11-17. Applicant acknowledges that the noted language explains that the system is capable of allowing items to pass through the diverter station without diversion. Col. 18, lines 8-15 of SYKES, however, explains that ref. No. 136 is a selector switch and not a home sensor. Furthermore, the disclosure noted by the Examiner cannot properly be characterized as a means for positioning the movable blade member in a static position allowing the item to

pass through the bidirectional divert mechanism. Nor has the Examiner explained otherwise.

Examiner's Assertion

The Examiner asserts that independent claim 22 is anticipated by SYKES.

Applicant's Response

Applicant respectfully disagrees. Claim 22 recites, inter alia:

> suspending the movement of the diverting mechanism based on at least one of:
> a detection of an item being jammed;
> a detection of an item exceeding a threshold physical characteristic limit;
> a detection that the diverting mechanism exceeds a travel limit; and
> a detection that an operator has open access to the diverting mechanism,
> wherein the detection of the jammed item and the detection of the item exceeding a threshold physical characteristic limit is based on a detection of an over current of an actuator which moves the diverting mechanism.

Applicant acknowledges that SYKES discloses the use of limit switches 28L and 28R and detector switches 47L, 47R, 51L, 51R, 126L, 126R, 131L and 131R. However, such sensors are not disclosed as suspending the movement of the diverting mechanism based on at least one of a detection of an item being jammed, a detection of an item exceeding a threshold physical characteristic limit, a detection that the diverting mechanism exceeds a travel limit, and a detection that an operator has open access to the diverting mechanism.

Examiner's Assertion

The Examiner asserts that independent claim 12 is obvious over the combination of SYKES and TORBET.

Applicant's Response

Applicant respectfully disagrees. Claim 12 specifically recites hoods having openings and being positioned at an entrance and at each exit of the frame. These features are not disclosed or suggested by any proper combination of SYKES and TORBET. As acknowledged by the Examiner, SYKES lacks any hoods. Moreover, while the Examiner has identified reference 26 in TORBET as the recited hoods, it is clear that the so-called hoods 26 are disclosed on TORBET as a housings "which serve merely to enclose the mechanism" M (see col. 2, lines 44-47). Such disclosure if hardly suggestive

of hoods having openings and being positioned at an entrance and at each exit of the frame. Nor has the Examiner demonstrated otherwise. Furthermore, even if one could properly characterize the housing 26 as a hood, TORBET does not disclose placing a hood 26 at an entrance and/or at one or more of the exits of a frame.

Examiner's Assertion

The Examiner asserts that independent claim 17 is obvious over the combination of SYKES, TORBET and BONNET.

Applicant's Response

Applicant respectfully disagrees. Claim 17 recites a safety hood positioned at least at one of the entrance and exits of the frame in combination with a control system that determines information from an item and predetermines a diverting direction for the item. As acknowledged by the Examiner, SYKES lacks any hoods. Moreover, while the Examiner has identified reference 26 in TORBET as the recited hoods, it is clear that the so-called hoods 26 are disclosed on TORBET as a housings "which serve merely to enclose the mechanism" M (see col. 2, lines 44-47). Such disclosure if hardly suggestive of a safety hood positioned at least at one of the entrance and exits of the frame. Nor has the Examiner demonstrated otherwise. Furthermore, the Examiner has not even alleged that BONNET discloses or suggests this feature.

Examiner's Assertion

The Examiner asserts that independent claim 10 is obvious over the combination of SYKES and LUTZ.

Applicant's Response

Applicant respectfully disagrees. Claim 10 specifically recites a plurality of sensors associated with the moveable diverting mechanism, wherein the plurality of sensors include: at least one home sensor for detecting a home position of the moveable diverting mechanism; and at least one over travel sensor for detecting an over travel position of the moveable diverting mechanism; and a plurality of sensors associated with the modular frame for detecting a flow of the items entering an entrance of the modular frame and exiting an exit of the modular frame. These features are not disclosed or suggested by any proper combination of SYKES and LUTZ. As acknowledged by the Examiner, SYKES

lacks the modular frame. Moreover, while the Examiner has identified the disclosed adjustable frame of LUTZ as the recited modular frame, the Examiner has failed to identify any language in either SYKES or LUTZ which discloses at least one home sensor for detecting a home position of the moveable diverting mechanism, much less, at least one over travel sensor for detecting an over travel position of the moveable diverting mechanism and a plurality of sensors associated with the modular frame for detecting a flow of the items entering an entrance.

Examiner's Assertion

The Examiner asserts that independent claim 11 is obvious over the combination of SYKES and BONNET.

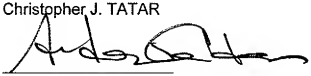
Applicant's Response

Applicant respectfully disagrees. Claim 11 specifically recites a control system that determines information from the item and predetermines a diverting direction for the item, wherein the item is moved with the movable diverting mechanism in the first direction based on a first control signal and in the second direction based on a second control signal. While it is apparent that the language cited by the Examiner in BONNET discloses that information can be read from the item used to cause the item to be diverted to an adjacent conveyor, such movement is in a single direction and not moving the item with the movable diverting mechanism in the first direction based on a first control signal and in the second direction based on a second control signal.

CONCLUSION

Reconsideration of the Final Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
Christopher J. TATAR



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